

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 257

BY SENATORS TRUMP AND WOELFEL

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §48-18-105 of the Code of West Virginia, 1931 as amended; and
 2 to amend and reenact §49-4-502 of said code, all relating to requiring the Bureau of Child
 3 Support Enforcement to appear in every abuse and neglect or delinquency case
 4 proceeding in circuit court which involves an issue of setting child support; requiring the
 5 prosecuting attorney provide formal notice of the date and time of these proceedings
 6 sufficiently in advance to the Bureau of Child Support Enforcement; requiring circuit judges
 7 to set child support in accordance with applicable child support guidelines; requiring
 8 parents to submit detailed income and expense disclosures in child abuse and neglect or
 9 delinquency cases set before a circuit court; and precluding attorneys appointed to
 10 represent parents in child abuse, neglect or delinquency cases from representing the
 11 parents to whom they are appointed on the setting of child support.

Be it enacted by the Legislature of West Virginia:

1 That §48-18-105 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §49-4-502 be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-105. General duties and powers of the Bureau for Child Support Enforcement.

1 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
 2 bureau shall have the following power and authority:

3 (1) To establish policies and procedures for obtaining and enforcing support orders and
 4 establishing paternity according to this chapter;

5 (2) To undertake directly, or by contract, activities to obtain and enforce support orders
 6 and establish paternity;

7 (3) To undertake directly, or by contract, activities to establish paternity for minors for
 8 whom paternity has not been acknowledged by the father or otherwise established by law;

9 (4) To undertake directly, or by contract, activities to collect and disburse support
10 payments;

11 (5) To contract for professional services with any person, firm, partnership, professional
12 corporation, association or other legal entity to provide representation for the bureau and the state
13 in administrative or judicial proceedings brought to obtain and enforce support orders and
14 establish paternity;

15 (6) To ensure that activities of a contractor under a contract for professional services are
16 carried out in a manner consistent with attorneys' professional responsibilities as established in
17 the rules of professional conduct as promulgated by the Supreme Court of Appeals;

18 (7) To contract for collection services with any person, firm, partnership, corporation,
19 association or other legal entity to collect and disburse amounts payable as support;

20 (8) To ensure the compliance of contractors and their employees with the provisions of
21 this chapter, and to terminate, after notice and hearing, the contractual relationship between the
22 bureau and a contractor who fails to comply;

23 (9) To require a contractor to take appropriate remedial or disciplinary action against any
24 employee who has violated or caused the contractor to violate the provisions of this chapter, in
25 accordance with procedures prescribed in legislative rules promulgated by the commission;

26 (10) To locate parents who owe a duty to pay child support;

27 (11) To cooperate with other agencies of this state and other states to search their records
28 to help locate parents;

29 (12) To cooperate with other states in establishing and enforcing support obligations;

30 (13) To exercise such other powers as may be necessary to effectuate the provisions of
31 this chapter;

32 (14) To establish and maintain procedures under which expedited processes,
33 administrative or judicial are in effect for obtaining and enforcing support orders and establishing
34 paternity according to this chapter;

35 (15) To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a
36 [§§ 29A-1-1 et seq.] of this code as are required by this chapter: *Provided*, That all rules which
37 are in effect at the time of the implementation of this section shall continue in full force and effect
38 until the commissioner of the Bureau for Child Support Enforcement promulgates a rule or rules
39 regarding the same subject matter;

40 (16) To adopt standards for staffing, record-keeping, reporting, intergovernmental
41 cooperation, training, physical structures and time frames for case processing;

42 (17) To review the state plan for child and spousal support to determine its conformance
43 or nonconformance with the provisions of 42 U.S.C. §654;

44 (18) To appear in every abuse and neglect or delinquency case appealed to or originating
45 in circuit court which includes an issue of setting and establishing child support: *Provided*, That in
46 accordance with section five hundred two, article four, chapter forty-nine of this code, the
47 prosecuting attorney in the county in which the case is proceeding shall provide formal notice of
48 the date and time of the hearing sufficiently in advance of the hearing to the Bureau of Child
49 Support Enforcement but in no event later than the time of transfer of physical custody of a child
50 to a designated care giver: *Provided, however*, That any parent of a subject child shall be
51 compelled by the circuit court to submit a detailed income and expense financial disclosure on a
52 form provided by the Bureau of Child Support to the Bureau, the circuit court, any party or party's
53 representative, as well as to any attorney appointed to act as guardian ad litem on behalf of the
54 subject minor child: *Provided further*, That, no attorney appointed to represent a parent in the
55 subject abuse and neglect case may represent or advocate on behalf of the parent for whom the
56 attorney has been appointed to represent on the setting of child support: *And provided further*,
57 That the circuit court must set child support in accordance with the provisions of article thirteen of
58 this chapter.

59 ~~(18)~~ (19) To cooperate with judicial organizations and the private bar to provide training to
60 persons involved in the establishment and enforcement of child support orders; and

61 ~~(19)~~ (20) To promulgate legislative rules pursuant to chapter twenty-nine-a [§§29A-1-1] of
 62 this code which may aid the Bureau for Child Support Enforcement in the establishment and
 63 enforcement of child support orders. In addition to the specific designation of such rules that
 64 constitute emergency rules within the meaning of section fifteen [§29A-3-15], article three, chapter
 65 twenty-nine-a of this code, the commissioner may promulgate other rules as emergency rules
 66 when such rule is necessary to ensure that the state is awarded federal funds for the actions
 67 described in the rule or when the promulgation of such rule is necessary to prevent substantial
 68 harm to the public interest by ensuring that child support is timely collected and disbursed.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. STATE RESPONSIBILITIES FOR CHILDREN.

**§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the
 department in child abuse and neglect matters; duties; to notify Bureau of Child
 Support Enforcement of upcoming hearings in certain cases.**

1 (a) It is the duty of every prosecuting attorney to fully and promptly cooperate with persons
 2 seeking to apply for relief, including copetitioners with the department, under this article in all
 3 cases of suspected child abuse and neglect; to promptly prepare applications and petitions for
 4 relief requested by those persons, to investigate reported cases of suspected child abuse and
 5 neglect for possible criminal activity; and to report at least annually to the grand jury regarding the
 6 discharge of his or her duties with respect thereto.

1 (b) It is the duty of every prosecuting attorney to provide formal notice of any future hearing
 2 involving or potentially involving issues of child support to the Bureau of Child Support
 3 Enforcement in any abuse, neglect or delinquency proceeding set for hearing in the circuit court.

NOTE: The purpose of this bill is to require the Bureau of Child Support Enforcement to appear in every abuse and neglect or delinquency case proceeding in circuit court which involves an issue of setting child support. It also requires prosecuting attorneys to provide

formal notice of the date and time of these proceedings sufficiently in advance to the Bureau of Child Support Enforcement while, additionally, requiring circuit judges to set child support in accordance with applicable child support guidelines set forth in §48-13 *et seq.* The bill requires parents to submit detailed income and expense disclosures in child abuse and neglect or delinquency cases set before a circuit court and precludes attorneys appointed to represent parents in these cases from representing the parents to whom they are otherwise appointed to represent on the issue involving setting child support..

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.